REMARKS

I. Claim Rejections – 35 USC § 102

Requirements for Prima Facie Anticipation

A general definition of *prima facie* unpatentability is provided at 37 C.F.R. §1.56(b)(2)(ii):

> A *prima facie* case of unpatentability is established when the information *compels a conclusion* that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability. (*emphasis added*)

"Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration." *W.L. Gore & Associates v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983) (citing *Soundscriber Corp. v. United States*, 360 F.2d 954, 960, 148 USPQ 298, 301 (Ct. Cl.), *adopted*, 149 USPQ 640 (Ct. Cl. 1966)), *cert. denied*, 469 U.S. 851 (1984). Thus, to anticipate the applicants' claims, Kurita must disclose each element recited therein. "There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention." *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ 2d 1001, 1010 (Fed. Cir. 1991).

To overcome the anticipation rejection, the applicant need only demonstrate that not all elements of a *prima facie* case of anticipation have been met, *i.e.*, show that the reference cited by the Examiner fails to disclose every element in each of the applicants' claims. "If the examination at the initial state does not produce a prima face case of unpatentability, then without more the applicant is entitled to grant of the patent." *In re Oetiker*, 977 F.2d 1443, 24 USPQ 2d 1443, 1444 (Fed. Cir. 1992).

Wilkerson

Claims 1-3, 7-8, 12-14 and 16-22 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 5,778,387, Wilkerson et al, hereinafter "Wilkerson".

Regarding claim 1, Examiner argued that Wilkerson discloses a method in a data-processing system for recovering data, comprising:

identifying desired data from a command line interface displayable (Fig. 55, Wilkerson) within a display area of a data-processing system (see col. 11, lines 34-41, Wilkerson);

automatically saving said desired data in a memory location of said data-processing system, in response to identifying said desired data from said command line interface (see col. 12, lines 16-24, Figs. 3-8 Wilkerson); and

automatically recovering said data from said memory location of said data-processing system for display within said command line interface, if said desired data is inadvertently deleted from a command line of said command line interface (see col. 19. lines 50-56, Fig. 32, Claim 1, Wilkerson).

Applicant disagrees with the Examiner's assessment. In particular, Applicant submits that, contrary to the Examiner's assertion, Wilkerson does not disclose automatically recovering data from a memory location of said data-processing system for display within said command line interface, if the desired data is inadvertently deleted using a command line of the command line interface.

Wilkerson is related to an automated menu driven computer process and system that allows recovery of corrupted or lost data from a computer database. The database automated recovery system relies on the operator selecting major functions including research, recovery and clean up options via menus known as "panels" which prompt the operator so as to reduce the amount of time required for

recovery of the corrupted or lost data (see column 1., lines 6-14 and column 2, lines 32-45).

Column 19, lines 50-56, FIG. 32, Claim 1 of Wilkerson, which was cited by the Examiner in support of the assertion that Wilkerson discloses the step of automatically recovering the data from the memory location of the data processing system for display within said command line interface, if the desired data is inadvertently deleted from a command line of the command line interface, recites that "The IC Delete routine, illustrated in FIG. 32 at step 744, has a secondary panel to protect against accidental deletion. After the initial panel is displayed 746, there is a determination if there are panel errors or an exit request from the user 748. If either occurs, the routine exits to step 144 of FIG. 12 (step 750). If neither occur, the process displays another panel 752, requiring the user to confirm deletion."

As mentioned in that passage, Wilkerson protects against "accidental deletion" and this is achieved by determining if there are "panel" errors or an exit request before proceeding with the Delete function so that Wilkerson does not disclose inadvertent deletion of data from a command line at all. Even if these "panels" can be considered as a command line interface, all that Wilkerson discloses is a process in which the method determines if there are "panel" errors or an exit request in the context of the operator using the "panel" to select the Delete routine function to delete data from the database and does not disclose or suggest inadvertently deleting the data using the "panel" (command line interface) and then recovering the deleted data.

Having regard to the foregoing, Applicant respectfully submits that Wilkerson does not disclose the method of claim 1 and that the rejection thereto under 35 U.S.C. 102(b) as being anticipated Wilkerson has been traversed.

Furthermore, there is nothing disclosed in Wilkerson to encourage the person of ordinary skill in the art to automatically recover the data from an memory location of said data-processing system for display within said command line interface, if said desired data is inadvertently deleted from a command line of said

command line interface. The database automated recovery method of Wilkerson relies on the operator intentional selecting major functions including research, recovery and clean up options via the "panels" which prompt the operator so as to reduce the amount of time required for recovery of the corrupted or lost data (see column 1., lines 6-14 and column 2, lines 32-45) and the person of ordinary skill in the art would therefore employ the method disclosed therein for preventing accidental deletion of data lost in the computer before the Delete function.

Applicant respectfully submits that claim 1 is patentable in view of Wilkerson.

Regarding claim 2, the Examiner argued that Wilkerson teaches the step of displaying said data within said command line interface, in response to automatically recovering said data from said memory location of said data-processing system (see col. 12, lines 16-24, Figs. 3-8 Wilkerson).

Applicant has amended claim 2 to include in the method the additional method features of displaying an original file of the desired data within the command line interface, displaying an original file location of the desired data within the command line interface; indicating within said command line interface deletion of said desired data; and indicating within said command line interface recovery of said deleted desired data.

These additional method features enable the user to reliably recover data inadvertently deleted from the command line of the user interface.

As already mentioned above in relation to the rejection to claim 1, Column 19, lines 50-56, FIG. 32, Claim 1 of Wilkerson "accidental deletion" s achieved by determining if there are "panel" errors or an exit request before proceeding with the Delete function so that Wilkerson does not disclose inadvertent deletion of data from a command line at all. Hence, Wilkerson does not disclose all the method steps of amended claim 2, as now claimed.

Applicant respectfully submits that amended method claim 2 is novel in view of Wilkerson and requests that the rejection to claim 2 under 35 U.S.C. 102(b) as being anticipated by Wilkerson be withdraw.

Regarding claim 3, the Examiner argued that Wilkerson teaches the steps of utilizing said command line interface to interact with an operating system associated with said data-processing system (see col. 12, lines 16-24, Figs. 3-8 Wilkerson).

Method of claim 3 has been restricted to displaying with the same window of said command line interface, said original file location, said indication of the deletion of said desired data, and said recovered data. As indicated in see col. 12, lines 16-24, Figs. 3-8 Wilkerson, separate panels are employed to execute different aspects of the recovery method of Wilkerson in contrast to the method of amended claim 3.

Applicant respectfully submits that amended method claim 3 is novel in view of Wilkerson and requests that the rejection to claim 3 under 35 U.S.C. 102(b) as being anticipated by Wilkerson be withdraw.

Regarding claim 7, Examiner argued that Wilkerson teaches the steps of permitting a user to specify a plurality of rules for recycling said data; recycling said data, in response to user input (see col. 24, lines 30-40, Fig. 45 Wilkerson).

Applicant respectfully disagrees with this assessment. Col. 24, lines 30-40, Fig. 45 of Wilkerson recites "If the abed date is prior to the call 1248, an error message being set 1250. If the analysis date is prior to the call 1256, it results in an error message 1258. Similarly, a listed analysis end which is prior to an analysis start 1260 results in an error message 1262. A recovery date prior to abed date 1264 results in an error message 1266. Finally, if recovery end is before the recovery start 1268, an error message is set 1270. After each error message, the system returns back to step 1200 of FIG. 44 (step 1274). However, if no errors exist, the routine continues at step 1276 of FIG. 46 (step 1272)." Wilkerson does not specifying a plurality of rules for recycling data in response to user input but rather discloses a method in which error messages are provided in response to the analysis date being prior to a call, analysis end or recovery start. Method of Wilkerson does not result in recycling of the data as such.

Applicant respectfully submits that method claim 7 is novel in view of Wilkerson and requests that the rejection to claim 7 under 35 U.S.C. 102(b) as being anticipated by Wilkerson be withdrawn.

Regarding claim 8, the Examiner argued that Wilkerson teaches the step of prompting said user to specify said plurality of rules for recycling said data through a display of a graphical user interface dialog (see Col. 19, lines 10-15, Wilkerson).

Applicant respectfully disagrees with this assessment. Col. 19, lines 1-15 of Wilkerson merely refers to error messages which do not relate to recycling data rules but rather dates or times in the recovery process.

In any event, claim 8 has been amended to limit the claim to specifying for recycling of data the minimum size of the data to be recycled and/or specifying special files/empty directories not to be recycled. As mentioned, Wilkerson refers to error messages relating to dates and times in the recovery process and there is nothing disclosed in Wilkerson to encourage specifying the minimum size of the data to be recycled and/or specifying special files/empty directories not to be recycled.

Applicant submits that amended method claim 8 is novel in view of Wilkerson and requests that the rejection to claim 8 under 35 U.S.C. 102(b) as being anticipated by Wilkerson be withdrawn.

Examiner argued that Claims 12-14 and 16-22 have the same subject matter as of claims 1-3 and 7-8 and are essentially rejected for the same reasons as disclosed above.

Applicant has made amendments to claims 13-14 and 19-20 corresponding to the amendment made to claims 2-3 and has made amendments to claims 17 & 22 corresponding to the amendment made to claim 8. Accordingly, the Applicant's arguments set forth above in relation to the patentability of Claims 1-3 and 7-9 apply, where appropriate, to claims 12-14 and 16-22.

Applicant submits therefore that the rejection to claims 12-14 and 16-22 under 35 U.S.C. 102(b) as being anticipated by Wilkerson be withdrawn.

II. Claim Rejections Under 35 U.S.C. §103

Requirements for Prima Facie Obviousness

The obligation of the Examiner to go forward and produce reasoning and evidence in support of obviousness under 35 U.S.C. §103 is clearly defined at M.P.E.P. §2142:

> The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

M.P.E.P. §2143 sets out the three basic criteria that a patent examiner must satisfy to establish a *prima facie* case of obviousness necessary for establishing a rejection to a claim under 35 U.S.C. §103:

1. some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;

2. a reasonable expectation of success; and

3. the teaching or suggestion of all the claim limitations by the prior art reference (or references when combined).

It follows that in the absence of such a *prima facie* showing of obviousness under 35 U.S.C. §103 by the examiner (assuming there are no objections or other grounds for rejection), an Applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443 (Fed. Cir. 1992).

Thus, in order to support an obviousness rejection under 35 U.S.C. §103, the Examiner is obliged to produce evidence compelling a conclusion that each of the three aforementioned basic criteria has been met.

Wilkerson in view of Gartland

Claims 4-6, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilkerson as applied to above claims in view of USGPUB 2005/0075748, Gartland et al., hereinafter referred to as Gartland.

Regarding claim 4, Examiner argued that said operating system comprises a Linux-based operating system (see col. 11, lines 34-41, Wilkerson). Examiner acknowledged that Wilkerson does not explicitly indicate claimed Linux based operating system. Examiner further argued that Gartland discloses claimed Linux based operating system (see para. 0050, Garltand). Examiner argued that it would have been obvious to one ordinary skill in the data processing art at the time the present invention to combine the teachings of the cited references because claimed Linux based operating system of Garland's teaching would having allowed Wilkerson's system for overall ISR system to arrange automatically handle a plurality of different reported error conditions and other issues that are recognized as having possible automatic resolutions or recoveries as suggested by see para. 000021 Garland.

Examiner's assessment of claim 4 is not understood by the Applicant since the Examiner argued that Wilkerson teaches the operating system comprises a Linux-based operating system and then subsequently argued that Wilkerson does not explicitly indicate claimed Linux based operating system.

In any event, Applicant submits that Claim 4 is patentable at least by virtue of the dependency of Claim 4 on amended Claims 1-3. Applicant respectfully request that the rejection under 35 U.S.C. 103(a) to Claim 4 as being unpatentalbe over Wilkerson in view of Gartland be withdrawn.

Regarding claim 5, Examiner argued that said operating system comprises a Unix-based operating system (see col. 12, lines 16-24, Wilkerson). Examiner acknowledged that Wilkerson does not explicitly indicate claimed Uniux based operating system. Examiner further argued that Gartland discloses claimed Uniux based operating system (see para. 0050, Garltand). Examiner argued that it would

have been obvious to one ordinary skill in the data processing art at the time the present invention to combine the teachings of the cited references because claimed Uinux based operating system of Garland's teaching would having allowed Wilkerson's system for overall ISR system to arrange automatically handle a plurality of different reported error conditions and other issues that are recognized as having possible automatic resolutions or recoveries as suggested by see para 000021 Garland.

Examiner's assessment of claim 5 is not understood by the Applicant since the Examiner argued that Wilkerson teaches the operating system comprises a Uinux-based operating system and then subsequently argued that Wilkerson does not explicitly indicate claimed Uinux based operating system.

In any event, Applicant submits that Claim 5 is patentable at least by virtue of the dependency of Claim 5 on amended Claims 1-3. Applicant respectfully requests that the rejection under 35 U.S.C. 103(a) to Claim 5 as being unpatentalbe over Wilkerson in view of Gartland be withdrawn.

Regarding claim 6, Examiner argued that said operating system comprises a Windows-based operating system (see col. 11, lines 34-41, Wilkerson). Examiner acknowledged that Wilkerson does not explicitly indicate claimed Windows-based operating system. Examiner further argued that Gartland discloses claimed Window-based operating system (see para. 0050, Garltand). Examiner argued that it would have been obvious to one ordinary skill in the data processing art at the time the present invention to combine the teachings of the cited references because claimed Windows-based operating system of Garland's teaching would having allowed Wilkerson's system for overall ISR system to arrange automatically handle a plurality of different reported error conditions and other issues that are recognized as having possible automatic resolutions or recoveries as suggested by see para 000021 Garland.

Examiner's assessment of claim 6 is not understood by the Applicant since the Examiner argued that Wilkerson teaches the operating system comprises a Windows-based operating system and then subsequently argued that Wilkerson does not explicitly indicate claimed Windows based operating system.

In any event, Applicant submits that Claim 6 is patentable at least by virtue of the dependency of Claim 6 on Claim 1. Applicant respectfully requests that the rejection under 35 U.S.C. 103(a) to Claim 6 as being unpatentalbe over Wilkerson in view of Gartland be withdrawn.

Examiner argued that claim 15 has the same subject-matter as of claims 4-6 and is essentially rejected for the same reasons discussed above. In any event, Applicant submits that Claim 15 is patentable at least by virtue of the dependency of Claim 15 on amended Claims 13-15. Applicant respectfully requests that the rejection under 35 U.S.C. 103(b) to Claim 15 as being unpatentable over Wilkerson in view of Gartland be withdrawn.

III. Conclusion

In view of the foregoing discussion, the Applicants have responded to each and every rejection of the Official Action. The Applicants have clarified the structural distinctions of the present invention by amendments herein. The foregoing discussion and amendments do not present new issues for consideration and no new search is necessitated. Such amendments are supported by the specification and do not constitute new matter. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections and further examination of the present application.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned representative to conduct an interview in an effort to expedite prosecution in connection with the present application.

Respectfully submitted,

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